

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

FILED

FEB 15 2019

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY [Signature]  
DEPUTY CLERK

DUNG HUYNH NGUYEN  
Pro Se Movant

v.

UNITED STATES OF AMERICA  
Respondent

Case No.: 5:13-CR-00580-RCL-5

PRO SE MOTION FOR THE APPLICATION OF THE U.S.  
SENTENCING COMMISSION TWO(2)LEVEL RETROACTIVE  
SENTENCE REDUCTION POLICY STATEMENT, 1B1.10, PURSUANT TO USSC  
AMENDMENT 782 & U.S.C. 3582(c)(2)

COMES NOW, Dung Huynh Nguyen, hereafter known as Movant, in Pro Se Forma, respectfully submits this Sentencing Reduction Motion, pursuant to 18 U.S.C., 3582(c)(2) and to pertinent Policy Statement 1B1.10 by the U.S. Sentencing Commission(USSC) and consistent with USSC Two(2) Level Reduction, Retroactive Application of Amendment 782. The application of Amendment 782, in this case avoids serious conflict with the Equal Protection Component of the Due Process Clause of the Fifth and the Eighth Amendment's Prohibition against Cruel and Unusual Punishment. As per statue, Movant is not an attorney, therefore this Motion cannot be held to the same standard as one developed by a Licensed Professional in Law.(Haines vs Kerner 404 U.S. 519)

IN SUPPORT THEREOF, Movant avers the following:

1.) Movant was indicted on July 17, 2013, with a First Superseding Indictment on September 18, 2013 and a Second Superseding Indictment on March 19, 2014.

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2.) On March 10, 2017 Movant Pled Guilty and the Movant was sentenced for having Pled Guilty to the one(1) Count on the Indictment, which consisted of OFF/CHG: 21 USC 846, 813, 841(A)(1) & (B)(1)(C), CONSPIRACY TO DISTRIBUTE AND POSSESS WITH INTENT TO DISTRIBUTE SUBSTANCES AND CONTROLLED ANALOGUES and was designated a Level 31, Category I of the Federal Sentencing Guidelines, thus being sentenced to serve 108 months in a Federal Correctional Institution and three(3) years of Supervised Release, with a \$100 Felony Assessment Fee.(see BOP Computation Sheet attachment A)

3.) The District Court considered the Pre-Sentencing Investigative Report before imposing Sentence. The Pre-Sentencing Investigative Report revealed no present or history of violence and/or Weapon Offenses, nor a Career Offender designation, pursuant to USSG 4B1.1 on the part of the Movant. Movant is not a Public Safety Risk, pursuant to 1B1.10(A1)(B)(ii).

4.) In order to reduce unwarranted Federal Guideline disparities, the Sentencing Reform Act of 1986 authorizes the United States Sentencing Commission to create and to retroactively amend Sentencing Guidelines to inform Judicial Discretion.

5.) In recent years, the Supreme Court has given Judges the power to impose sentences that are not greater than necessary to satisfy the statutory purposes of sentencing, to prevent prison over population (28 U.S.C. 994(a)), to consider all of the characteristics of the Offender and circumstances of the offense, to reject Advisory Guidelines that are not based on National Sentencing Data and Empirical Research, to follow and comply with U.S. Sentencing Commission Policies and Amendments and to serve their function in the constructive

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5.)(cont.) evolution of responsible Guidelines.(see United States v. Booker, 543 U.S. 220(2005), Kimbrough v. United States, 128 S.Ct., 558(2007), Nelson v. United States, 129 S.Ct. 890(January 26, 2009)

6.) This Court may modify a defendant's term of imprisonment once it has been imposed, when the United States Sentencing Commission (USSC) passes and adopts an amendment to the Guidelines Retroactively and the Amended Guideline was part of the basis of the Defendant's Guideline Range, to the extent that it is applicable, if such a Reduction is consistent with the applicable Policy Statement issued by the U.S. Sentencing Commission, pursuant to the U.S. Sentencing Commission Amendment 782.

7.) Furthermore, Movant avers that in his two(2) years of incarceration, he has fully recovered from his addiction issues and has repeatedly demonstrated that he poses No Risk To Public Safety(1B1.10(A)(B)(ii), based on the following: a.) has successfully participated in prison in two(2) Drug Abuse Prevention Programs, b.) has successfully completed courses in "Positive Thinking" and "Character Education" that has assisted him to think and survive without the Drug High, c.) furthermore, has taken many other courses that has assisted in his mental, psychological and spiritual growth.(see BOP Educational Transcript Sheet attachment B) In essence, this Pro Se Movant, after many years of denial concerning his addiction, is in denial no more, is drug free, positive thinking and acting person that very much intends on becoming a positive tax-paying and contributing citizen and no longer a burden to society. It would be remiss not to mention

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7.)(cont.) that this Movant received two(2) minor infractions when he arrived in prison because he did not know the rules. Since then he has read and internalized the rules and has committed no other infraction.(see BOP Disciplinary Sheet attachment C) Through his committment and positive actions, this Movant contends that he has earned the above requested two(2) Level Retroactive Reduction and prays that the Honorable Court sees and considers the Merits of the case and grants the appropriate relief. Furthermore, Movant avers that he has taken every opportunity in participating in every BOP Re-Entry Program available, pursuant to 18 U.S.C 2624(c)

8.) Movant stands ready and prepared to accept the responsibility of providing for his family, especially for his Special Needs four(4) year old son, who suffers from Non Immune Hydrops.(see attachment D)

9.) Movant avers that he is entitled to the relief as implemented by the U.S. Sentencing Commission's Amendment 782 and for the foregoing reasons and case law cited herein, Movant respectfully moves that the Honorable Court under Provision 18 U.S.C. 3582(c) (2), Sentencing Guideline 1B1.10 and the U.S. Sentencing Commission Amendment 782 grant Movant the Two(2) Level Retroactive Sentence Reduction, as per cited Amendment and modify by means of a Court Order the Movant's Sentence from the initial Level 31, Category I to Level 29, Category I, as noted in the Federal Guideline Table, which translates to a new and modified 87 Month Sentence, while the Supervised Release is to remain the same at three(3) years, as well as the \$100 Felong Assessment Fee. This Reduction to the instant case avoids conflict with the Equal Protection Component

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9.)(cont.) of the Due Process Clause of the Fifth and the Eighth Amendment's Prohibition against Cruel and Unusual Punishment.

WHEREFORE, Movant prays this Honorable Court grants this Motion consistent with the United States Sentencing Commission, Retroactive Amendment 782, the 18 U.S.C. 3582(c)(2) and Sentencing Guideline Section 1.B1.10 and/or grants any other Relief this Honorable Court deems proper.

PRO SE MOVANT, DECLARES UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on this day of 11<sup>TH</sup> of the month of February, 2019.

Respectfully Submitted:

*Dung Huynh Nguyen*

Dung Huynh Nguyen  
Pro Se Movant  
ID No.: 98097-308  
La Tuna Federal  
Prison Camp I  
P.O. Box 8000  
Anthony, Texas 88021

CASE NO.: 5:13-CR-00580-RCL-5

CERTIFICATION OF SERVICE

I, DUNG HUYNH NGUYEN, PRO SE MOVANT CERTIFIES THAT A TRUE AND  
CORRECT COPY OF THE FOREGOING WAS SERVED WITH THE U.S. DISTRICT  
COURT CLERK IN THE WESTERN DISTRICT OF TEXAS, SAN ANTONIO DIVISION,  
VIA PRISON MAIL ON THIS 11<sup>TH</sup> DAY OF THE MONTH OF February,  
2019.

Dung Huynh Nguyen

Dung Huynh Nguyen, Pro Se Movant  
ID No.: 980097-308  
La Tuna Federal Prison Camp I  
P.O. Box 8000  
Anthony, Texas 88021

Attachment A

LATDC 540*23 *	SENTENCE MONITORING	*	01-09-2019
PAGE 001 *	COMPUTATION DATA	*	14:48:03
	AS OF 01-09-2019		

REGNO...: 98097-308 NAME: NGUYEN, DUNG HUYNH

FBI NO.....: 488266KD8	DATE OF BIRTH: 03-24-1979	AGE: 39
ARS1.....: LAT/A-DES		
UNIT.....: CAMP	QUARTERS.....: I04-169U	
DETAINEES.....: NO	NOTIFICATIONS: NO	

HOME DETENTION ELIGIBILITY DATE: 05-28-2024

THE FOLLOWING SENTENCE DATA IS FOR THE INMATE'S CURRENT COMMITMENT.  
 THE INMATE IS PROJECTED FOR RELEASE: 11-28-2024 VIA GCT REL

-----CURRENT JUDGMENT/WARRANT NO: 010 -----

COURT OF JURISDICTION.....: TEXAS, WESTERN DISTRICT  
 DOCKET NUMBER.....: 5:13-CR-580-RCL(05)  
 JUDGE.....: LAMBERTH  
 DATE SENTENCED/PROBATION IMPOSED: 05-08-2017  
 DATE COMMITTED.....: 07-06-2017  
 HOW COMMITTED.....: US DISTRICT COURT COMMITMENT  
 PROBATION IMPOSED.....: NO

	FELONY ASSESS	MISDMNR ASSESS	FINES	COSTS
NON-COMMITTED..:	\$100.00	\$00.00	\$00.00	\$00.00

RESTITUTION...:	PROPERTY: NO	SERVICES: NO	AMOUNT: \$00.00
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-----CURRENT OBLIGATION NO: 010 -----

OFFENSE CODE.....: 391  
 OFF/CHG: 21 USC 846,813,841(A)(1)&(B)(1)(C) CONSPIRACY TO DISTRIBUTE,  
 AND POSSESS WITH INTENT TO DISTRIBUTE CONTROLLED SUBSTANCES  
 AND CONTROLLED SUBSTANCE ANALOGUES (CT.1)

SENTENCE PROCEDURE.....: 3559 PLRA SENTENCE  
 SENTENCE IMPOSED/TIME TO SERVE.: 108 MONTHS  
 TERM OF SUPERVISION.....: 3 YEARS  
 DATE OF OFFENSE.....: 03-19-2014

G0002 MORE PAGES TO FOLLOW . . .

LATDC 540\*23 \*  
PAGE 002 OF 002 \*

SENTENCE MONITORING  
COMPUTATION DATA  
AS OF 01-09-2019

\* 01-09-2019  
\* 14:48:03

REGNO...: 98097-308 NAME: NGUYEN, DUNG HUYNH

-----CURRENT COMPUTATION NO: 010 -----

COMPUTATION 010 WAS LAST UPDATED ON 08-01-2018 AT DSC AUTOMATICALLY  
COMPUTATION CERTIFIED ON 08-02-2018 BY DESIG/SENTENCE COMPUTATION CTR

THE FOLLOWING JUDGMENTS, WARRANTS AND OBLIGATIONS ARE INCLUDED IN  
CURRENT COMPUTATION 010: 010 010

DATE COMPUTATION BEGAN.....: 05-08-2017  
TOTAL TERM IN EFFECT.....: 108 MONTHS  
TOTAL TERM IN EFFECT CONVERTED...: 9 YEARS  
EARLIEST DATE OF OFFENSE.....: 03-19-2014

JAIL CREDIT.....:	FROM DATE	THRU DATE
	06-26-2013	06-27-2013
	03-23-2016	04-11-2016
	02-17-2017	05-07-2017

TOTAL PRIOR CREDIT TIME.....: 102  
TOTAL INOPERATIVE TIME.....: 0  
TOTAL GCT EARNED AND PROJECTED...: 423  
TOTAL GCT EARNED.....: 54  
STATUTORY RELEASE DATE PROJECTED: 11-28-2024  
EXPIRATION FULL TERM DATE.....: 01-25-2026  
TIME SERVED.....: 1 YEARS      11 MONTHS      14 DAYS  
PERCENTAGE OF FULL TERM SERVED...: 21.7

PROJECTED SATISFACTION DATE.....: 11-28-2024  
PROJECTED SATISFACTION METHOD....: GCT REL

REMARKS.....: 8-1-18 DSCC ASSUMED J/RRW

S0055

NO PRIOR SENTENCE DATA EXISTS FOR THIS INMATE



LATDC \* INMATE EDUCATION DATA \* 01-09-2019  
 PAGE 001 OF 001 \* TRANSCRIPT \* 14:49:51

REGISTER NO: 98097-308 NAME.: NGUYEN FUNC: PRT  
 FORMAT.....: TRANSCRIPT RSP OF: LAT-LA TUNA FCI

## ----- EDUCATION INFORMATION -----

FACL	ASSIGNMENT	DESCRIPTION	START DATE/TIME	STOP DATE/TIME
LAT	ESL HAS	ENGLISH PROFICIENT	07-17-2017 1350	CURRENT
LAT	GED HAS	COMPLETED GED OR HS DIPLOMA	01-03-2018 0001	CURRENT

## ----- EDUCATION COURSES -----

SUB-FACL	DESCRIPTION	START DATE	STOP DATE	EVNT	AC	LV	HRS
LAT SCP	ACE KEYBOARDING I COURSE	10-09-2018	CURRENT				
LAT SCP	SECRETS TO MENTAL MATH	10-11-2018	12-13-2018	P	C	P	10
LAT SCP	ACE GREEK CLASS CAMP	10-09-2018	12-11-2018	P	C	P	10
LAT SCP	CREATING WEALTH ACE CLASS	10-10-2018	11-07-2018	P	C	P	10
LAT SCP	CAMP CAREER GUIDANCE	11-06-2017	12-04-2017	P	C	P	8
LAT SCP	RPP NR DAP	02-21-2018	07-13-2018	P	C	P	36
LAT SCP	RPP:DRUG EDUCATION COURSE	12-20-2017	02-27-2018	P	C	P	12
LAT SCP	JOB FAIR: INFORMATIONAL	12-13-2017	12-13-2017	P	C	P	4
LAT SCP	CAMP POSITIVE THINKING ACE	10-31-2017	12-05-2017	P	C	P	10
LAT SCP	COMMERCIAL REAL ESTATE ACE	10-30-2017	12-01-2017	P	C	P	10
LAT SCP	ACE CHARACTER EDUCATION CAMP	10-31-2017	11-29-2017	P	C	P	10
TAF SCP	CAMP REC PIANO TH 1400-1500	07-14-2017	09-20-2017	P	W	V	1
TAF SCP	PDPC: WED 0800 ROOM A4-2102	07-12-2017	07-19-2017	P	W	V	3

## ----- HIGH TEST SCORES -----

TEST	SUBTEST	SCORE	TEST DATE	TEST FACL	FORM	STATE
ABLE	LANGUAGE	13.0	09-13-2017	TAF	2	
	NUMBER OPR	12.5	09-13-2017	TAF	2	
	PROB SOLV	13.0	09-13-2017	TAF	2	
	READ COMP	13.0	09-13-2017	TAF	2	
	SPELLING	13.0	09-13-2017	TAF	2	
	VOCABULARY	13.0	09-13-2017	TAF	2	

G0000

TRANSACTION SUCCESSFULLY COMPLETED

Attachment C

LATDC \* INMATE DISCIPLINE DATA \* 01-09-2019  
PAGE 001 OF 001 \* CHRONOLOGICAL DISCIPLINARY RECORD \* 14:48:46

REGISTER NO: 98097-308 NAME...: NGUYEN, DUNG HUYNH  
FUNCTION...: PRT FORMAT: CHRONO LIMIT TO \_\_\_\_ MOS PRIOR TO 01-09-2019

-----  
REPORT NUMBER/STATUS.: 3012888 - SANCTIONED INCIDENT DATE/TIME: 07-21-2017 1330  
UDC HEARING DATE/TIME: 07-26-2017 1250  
FACL/UDC/CHAIRPERSON.: TAF/A4/B. PAIT  
REPORT REMARKS.....: UDC BASED IT'S DECISION ON THE WRITTEN REPORT AND  
GREATER WEIGHT OF THE EVIDENCE.

307 REFUSING TO OBEY AN ORDER - FREQ: 1  
LP PHONE / 1 MONTHS / CS  
COMP: LAW: UDC IMPOSES 1 MONTH LOSS OF PHONES FROM  
7-27-17 TO 8-27-17.  
316 BEING IN UNAUTHORIZED AREA - FREQ: 1  
LP COMM / 1 MONTHS / CS  
COMP: LAW: UDC IMPOSES 1 MONTH LOSS OF COMMISSARY FROM  
7-27-17 TO 8-27-17.

G0005 TRANSACTION SUCCESSFULLY COMPLETED - CONTINUE PROCESSING IF DESIRED



**CHILDREN'S  
HOSPITAL**

**CLINICAL GENETICS**

Office: ACC Room 2308

Telephone: (504) 896-9254

Fax: (504) 896-3997

Appointments: (504) 896-9254

**CLINICS:**

**NEW ORLEANS**

Children's Hospital, ACC  
200 Henry Clay Avenue  
New Orleans, LA 70118

**METAIRIE**

Children's Hospital Metairie Center  
3040 33rd Street, Metairie, LA 70001

**BATON ROUGE**

Children's Hospital Outpatient Clinic  
720 Connell Park Lane  
Baton Rouge, LA 70806

**LAFAYETTE**

Children's Hospital Outpatient Clinic  
Burdin Riehl ACC of LGMC  
1211 Coolidge Blvd., 2nd Floor  
Lafayette, LA 70503

**Lake Charles State Clinic**

3236 Kirkman St.  
Lake Charles, LA 70602  
Appt: (337) 478-6020

**Thibodaux State Clinic**

2535 Veterans Blvd.  
Thibodaux, LA 70301  
Appt: (985) 447-0896

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200 Henry Clay Avenue  
New Orleans, Louisiana 70118  
(504) 899-9511  
www.chnola.org

**DEPARTMENT OF GENETICS**

Children's Hospital New Orleans

**DIVISION OF GENETICS, DEPARTMENT OF PEDIATRICS**

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**AMY MOLINA, RN, BSN**  
amoli2@lsuhsc.edu

April 5, 2015

Jeanne Rademacher, MD  
Carousel Pediatrics  
4224 Houma Boulevard, Suite 240  
Metairie, Louisiana 70006

Re: **MAXIMUS NGUYEN**  
DOB: 03/20/2014  
DOV: 04/01/2015

Dear Dr. Rademacher:

As you know, I had the opportunity to evaluate your patient Maximus Nguyen in my genetics clinic at Children's Hospital on April 1, 2015. He was accompanied by his mother Mrs. Julie Nguyen and his father.

Maximus is a 1 year old Vietnamese American male who has a history of non-immune hydrops that was diagnosed in utero. His mother mentioned that at about 20 weeks gestation, hydrops was diagnosed and she underwent an amniocentesis that was reported as normal. Dr. Marble had the opportunity to examine him in the newborn period and he recommended testing for the common causes of non-immune hydrops including: MPS, Sialidosis, and Gaucher disease, congenital disorders of glycosylation, hemoglobinopathies and Thalassemias. Results did not particularly reveal any cause for Maximus presentation. He had a slightly elevated urine free and total sialic acid and his transferring isoelectric focusing at Mayo clinic showed slight elevation in the underglycosylated transferring but not as elevated as in patients with CDG, a repeat sample to GCC was normal but they mentioned that in patients younger than 3 months an atypical pattern may be missed.

He has continued to fail to thrive and has global developmental delays. He was recently admitted to the hospital and was diagnosed with RSV, at that time I requested repeat of some of his abnormal labs and he continues to have mild elevations of the urine sialic acid and had a peripheral smear that showed a left shift with lymphocyte vacuolization and giant platelets.

FOUNDING MEMBER OF



**LCMC** | HEALTH

His past medical history is also positive for s/p eye surgery with Dr. Ellis to unclog his tear ducts; he is also s/p in utero placement of pigtail catheters to alleviate bilateral pleural effusions.

He continues to have global developmental delays, he is able to roll but not yet sitting independently, he was also found to be very flexible and is able to put his toes on his mouth. He started saying mama and smiles and interacts socially. He still does not attend daycare, mother reports she is feeding him formula and stage II baby foods, they will wait sometime for transitioning to whole milk. His mother reported that despite appropriate feedings he continues to be very small for his age. He has normal sleeping patterns. He lives at home with his mother and father.

A complete review of systems was positive for a history of constipation, he was admitted in December with RSV, he is s/p surgery to correct clogged tear ducts, he follows up with Cardiology with Dr. Ascutto and with Dr. Levine in Pulmonary he has developmental delays and low muscle tone and a history of non immune hydrops. He is receiving services through ES, OT and PT.

In regards to medications he continues to take MiraLax and a multivitamin. They denied allergies to any medication or foods.


On physical exam today, his length was 67 cm (<<5<sup>th</sup> %), weight was 6.15 kg (<<5<sup>th</sup> %). Temperature was 98.9 F.

In general, Maximus was awake in his carrier, and cooperative with examination. He was microcephalic and with positional plagiocephaly. Eyes with palpebral fissures that appeared short. Palate was intact; I was unable to see his uvula. Ears are borderline low set and posteriorly rotated. Neck: examination was supple, thyroid was not palpable, no LAD were noted, he has a small pit on his lower jaw and his mother mentioned something was removed from it while he was in the NICU, she is unsure what. Lungs: CTAB. CV: regular rate and rhythm, no murmurs, rubs, or gallops, with normal and symmetric peripheral pulses. Abdomen: soft, non tender and non distended, with BS in all quadrants, he has a small umbilical hernia and I palpated his liver maybe 1 cm BCM. GU: Normal external male genitalia, left testicle in canal. Neurological examination: Mental status: awake and alert, face was symmetric, PERRLA, Motor examination revealed slightly low muscle tone, DTR's were 2+.

In summary Maximus Nguyen is a 1 year old Vietnamese American male who was diagnosed in utero with non immune hydrops. He has had an extensive work-up that ruled out common causes of non immune hydrops. He continues to be small and microcephalic with low tone, the possibility of a chromosome was ruled out as he had normal SNP array (prenatal and post-natally), he has had slightly elevated sialic acid in urine, and I would like to repeat it again today, I am convinced Maximus has a Genetic disorder in identification, he continues to fail to thrive and has had non specific elevations in urinary sialic acid and a history of non immune hydrops, I feel that the next best step towards finding a diagnosis is considering sending Exome sequencing. He has Medicaid now and in the past we have not had success getting Medicaid approval for such testing, we should explore the possibility of research Exome. We will wait from the results of testing ordered today and will continue to monitor clinically and submit his case for research.

Thank you for allowing me to participate in Maximus's care. Feel free to contact me with any questions.

Best regards,



Regina M. Zambrano, M.D  
Assistant Professor of Pediatrics  
Division of Clinical Genetics, Department of Pediatrics  
Louisiana State University Health Sciences Center and  
Children's Hospital New Orleans

Cc: The Parents of Maximus Nguyen  
2317 Metairie Rd  
Metairie, LA 70001

February 11, 2019

Clerk, U.S. District Court  
Western District of Texas  
John H. Wood Jr., U.S. Courthouse  
655 E. Cesar E. Chavez Blvd.  
San Antonio, Texas 78206-1106

HONORABLE FEDERAL COURT CLERK:

Re: NGUYEN, Dung Huynh  
Fed. Reg. No.: 98097-308  
Case No.: 5:13-CR-00580-RCL-05

I am respectfully submitting my Two(2) Level Reduction in Sentence Motion on my above captioned case, pursuant to United States Commission (USSC) Retroactive Amendment 782, in accordance to 18 USC 3582(c)(2). I pray the Honorable Court will grant the relief, as stipulated by the USSC.

Please find a self-addressed and pre-stamped envelope that you may use to respond to notify me that my Motion has been received and filed. A simple stamped copy of the first page of my Motion will suffice.

I want to thank you in advance for any assistance that you may be able to render me regarding my request. Should you need further information in order for you to process my Motion, please do not hesitate to correspond with me at my below noted address. Thanks Again!

With Much Respect,

*Dung Huynh Nguyen*

Dung Huynh Nguyen  
Pro Se Movant  
ID No.: 98097-308  
La Tuna Federal Prison Camp I  
P.O. Box 8000  
Anthony, Texas 78021

cc: BOP Counselor  
Family

Incls: Motion  
Attachments

